

State of California

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Legislative Change No.

04-26

Bill Number: SB 1713

Author: Machado

Chapter Number: 04-552

Laws Affecting Franchise Tax Board: Revenue and Taxation Code Sections 17072, 17132.5, 17144.5, 17152, 17160.5 (new), 17202.5 (new), 17731, 18571, 23701w, 23703.5 (new), and 23712.

Date Filed with the Secretary of the State: 9-16-04

SUBJECT: Conformity To The Military Family Tax Relief Act Of 2003 (MFTRA)

Senate Bill 1713 (Machado), made the following changes to California law:

Section 17072 of the Revenue and Taxation Code is amended and Section 17202.5 is added to the Revenue and Taxation Code.

Above-the-Line Deduction for Overnight Travel Expenses of National Guard and Reserve Members.

This act would conform to the MFTRA change that allows an above-the-line deduction for the overnight transportation, meals, and lodging expenses of National Guard and Reserve members who must travel away from home more than 100 miles (and stay overnight) to attend National Guard and Reserve meetings. Accordingly, these individuals incurring these expenses can deduct them from gross income regardless of whether they itemize their deductions. The amount of the expenses that may be deducted may not exceed the general federal government per diem rate applicable to that locale. Also, the amount of the expenses that may be deducted is only available for any period during which the individual is more than 100 miles from home in connection with such services.

EFFECTIVE DATE

The federal act was made effective for amounts paid or incurred in taxable years beginning after December 31, 2002, and this act makes the California provision effective for the same amounts in the same periods.

Section 17132.5 & 17731 of the Revenue and Taxation Code are amended.

Extension of Certain Tax Relief Provisions to Astronauts.

This act conforms California law to the MFTRA changes that extend the exclusion from income tax and the exclusion for death benefits available under the Victims of Terrorism Tax Relief Act of 2001, to astronauts who lose their lives on a space mission (including the individuals who lost their lives in the space shuttle Columbia disaster).

Bureau Director

Jana Howard for Brian Putler

Date

11/5/04

EFFECTIVE DATE

The federal act was made effective for qualified individuals whose lives are lost in the line of duty after December 31, 2002, and this act makes the California provision effective for the same individuals in the same periods.

Section 17144.5 of the Revenue and Taxation Code is amended.

Exclusion for Amounts Received Under Department of Defense Homeowners Assistance Program (HAP).

This act conforms California law to the MFTRA changes that generally exempt from gross income amounts received under the HAP (as in effect on November 11, 2003). The excludable amount is limited to the reduction in the fair market value of property.

EFFECTIVE DATE

The federal act was made effective for payments made after November 11, 2003, and this act makes the California provision effective for the same payments.

Section 17152 of the Revenue and Taxation Code is amended.

Exclusion of Gain on Sale of a Principal Residence by a Member of the Uniformed Services or the Foreign Service.

This act conforms California law to the MFTRA changes to provide that an individual may elect to suspend for a maximum of ten years the five-year test period for ownership and use during certain absences due to service in the uniformed services or the Foreign Service of the United States.

The uniformed services include:

- the Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard);
- the commissioned corps of the National Oceanic and Atmospheric Administration; and
- the commissioned corps of the Public Health Service.

If the election is made, the five-year period ending on the date of the sale or exchange of a principal residence does not include any period up to ten years during which the taxpayer or the taxpayer's spouse is on qualified official extended duty as a member of the uniformed services or of the Foreign Service of the United States.

For these purposes, qualified official extended duty is any period of extended duty while serving at a place of duty at least 50 miles away from the taxpayer's principal residence or under orders compelling residence in Government furnished quarters. Extended duty is defined as any period of duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period. The election may be made with respect to only one property for a suspension period.

EFFECTIVE DATE

The federal act was made effective as if included in the Taxpayer Relief Act of 1997 and this act makes the California provision effective for the same periods. Consistent with other elections under this provision, a taxpayer's election to suspend the period of ownership and use for federal purposes is binding for California purposes. Additionally, language, modeled after the federal act, allows for the filing of a claim for refund even though the state statute of limitations (SOL) for filing a claim is otherwise closed.

Section 17160.5 is added to the Revenue and Taxation Code.

A. Exclusion from Gross Income of Certain Death Gratuity Payments.

This act conforms California law to the MFTRA changes to this provision that increases the exclusion from gross income of certain death gratuity payments to \$12,000.

EFFECTIVE DATE

The federal act was made effective with respect to deaths occurring after September 10, 2001, and this act makes the California provision effective with respect to deaths occurring after September 10, 2001. Additionally, language, modeled after the federal act, allows for the filing of a claim for refund even though the state SOL for filing a claim is otherwise closed.

B. Clarification of Treatment of Certain Dependent Care Assistance Programs Provided to Members of the Uniformed Services of the United States.

This act conforms California law to the MFTRA changes to this provision that clarify that dependent care assistance provided under a dependent care assistance program (as in effect on November 11, 2003) for a member of the uniformed services by reason of the member's status or service as a member of the uniformed services is excludable from gross income as a qualified military benefit subject to the present-law rules. The uniformed services include:

- the Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard);
- the commissioned corps of the National Oceanic and Atmospheric Administration; and
- the commissioned corps of the Public Health Service.

EFFECTIVE DATE

The federal act was made effective for taxable years beginning after December 31, 2002, and contained language stating that no inference was to be drawn from the change with respect to taxable years beginning before January 1, 2003. This act makes the California provision effective for the same periods and contains the same "no inference" language.

Section 18571 of the Revenue and Taxation Code is amended.

Expansion of Combat Zone Filing Rules to Contingency Operations.

This act conforms California law to the MFTRA changes that apply the special suspension of time period rules relating to combat zones to persons deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation or that becomes a contingency operation by operation of law. A contingency operation is defined¹ as a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force, or results in the call or order to (or retention on) active duty of members of the uniformed services during a war or a national emergency declared by the President or Congress.

¹ The definition is by cross-reference to 10 U.S.C. Section 101.

EFFECTIVE DATE

The federal act was made effective to any period for performing an act that has not expired before November 11, 2003, and this act contains the same effective date for the California provision.

Section 23701w of the Revenue and Taxation Code is amended.

Modification of Membership Requirements for Exemption from Tax for Certain Veterans' Organizations.

This act conforms California law to the MFTRA changes to that permit ancestors or lineal descendants of past or present members of the Armed Forces of the United States or of cadets to qualify as members for purposes of the "substantially all" test. The act does not change the requirement that 75% of the organization's members must be past or present members of the Armed Forces of the United States.

EFFECTIVE DATE

The federal act was made effective for taxable years beginning after November 11, 2003, and this act makes the California provision effective for the same periods.

Section 23703.5 is added to the Revenue and Taxation Code.

Suspension of Tax-Exempt Status of Terrorist Organizations.

This act conforms California law to the MFTRA change that suspends the tax-exempt status of an organization that is exempt from tax for any period during which the organization is designated or identified by U.S. federal authorities as a terrorist organization or supporter of terrorism. The act also makes such an organization ineligible to apply for tax exemption. The period of suspension runs from the date the organization is first designated or identified (or from November 11, 2003, whichever is later) to the date when all designations or identifications with respect to the organization have been rescinded pursuant to the law or Executive Order under which the designation or identification was made.

EFFECTIVE DATE

The federal act was made effective for designations made before, on, or after November 11, 2003, and this bill makes the California provision effective for the same periods. However, this act provides that this provision only applies where the federal exemption is suspended and only during the time of the federal suspension.

Section 23712 of the Revenue and Taxation Code is amended.

Treatment of Service Academy Appointments as Scholarships for Purposes of Qualified Tuition Programs and Coverdell Education Savings Accounts.

This act conforms California law to the MFTRA changes to this provision except that the additional tax is 2 ½% under California law versus 10% under federal law. Under the provision, the additional tax does not apply to withdrawals from ESAs and qualified tuition programs made on account of the attendance of the beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy. The amount of funds that can be withdrawn without payment of the additional tax is limited to the costs of advanced education as defined in Title 10 U.S.C. Section 2005(e)(3) (as in effect on November 11, 2003) at such Academies.

EFFECTIVE DATE

The federal act was made effective for taxable years beginning after December 31, 2002, and this act makes the California provision effective for the same periods.

This act is effective September 16, 2004, and is operative as provided in each individual section. Additionally, language, modeled after the federal act, with respect to the exclusions from income for home sales and death gratuity payments, allows for the filing of a claim for refund even though the state SOL for filing a claim is otherwise closed.

This act will not require any reports by the department to the Legislature.